

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.15635 of 2004

Between:

M. Jagannath Reddy, S/o. M. Chennaiah Reddy,
R/o. Elumagundlapalli, Penumur Mandal,

Chittoor District.

..... PETITIONER

AND

The Mandal Revenue Officer, Penumur Mandal,
Chittoor District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to declare the B. Memo No.1/1414 dated 28-8-2004 issued under section 7 of the A.P. Land Encroachment Act 1905 by the respondent as illegal, arbitrary and without jurisdiction by issuing appropriate Writ or order or direction especially one in the nature of Writ of Mandamus

**Counsel for the Petitioner: Mr. M.R.S. SRINIVAS representing
MR.M.V.S.SURESH KUMAR, Advocate**

Counsel for the Respondent: GP FOR REVENUE

The Court made the following:

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ORDER:

The petitioner is a resident of Elumagundlapalli in Chittoor District. The respondent herein issued a notice under Section 7 of the A.P. Land Encroachment Act, 1905 (for brevity ‘the Act’) calling upon the petitioner to remove the encroachment in respect of the land admeasuring Ac.0.50 cents in Survey No.107/1A on the ground that it is a Government poramboke land. The petitioner assails the same on the ground that it is improper for the Mandal Revenue Officer to invoke the provisions of the Act, when the petitioner is in possession and enjoyment of the land by reason of the Proceedings dated 14.5.2003 whereby and whereunder the respondent allegedly leased out the land for raising 20 trees.

The learned Counsel for the petitioner Sri M.R.S. Srinivas submits that though the petitioner has an effective remedy of submitting explanation and also filing appeal before the Revenue Divisional Officer against any order that may be passed, under Section 6 of the Act, the writ petition is not barred as the impugned proceedings suffers from inherent lack of jurisdiction. I am afraid, I cannot agree with the contention. Admittedly, the land is a Government land and therefore the Mandal Revenue Officer can invoke the provisions of the Act. However, it is always open to the petitioner to approach the Mandal Revenue Officer by way of an explanation to the notice and contend that he is not an encroacher and he is a lessee of the land.

It is now axiomatic that ordinarily this Court would not entertain a writ petition when show cause notice is challenged. Even where question of jurisdiction is raised, unless such lack of jurisdiction is inherent, ordinarily the Court should not entertain a writ petition. A reference may be made to the latest judgment of the Supreme Court in **Special Director v. Mohd. Ghulam Ghouse** wherein it was held:

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This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue, which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may

or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

In view of the settled principles of law, this writ petition is misconceived. Giving liberty to the petitioner to approach the Mandal Revenue Officer by filing explanation within a period of one week from today and further directing the Mandal Revenue Officer to consider Proceedings dated 14.5.2003 allegedly issued by the Mandal Revenue Officer and other points that may be taken by the petitioner, the writ petition is disposed of.

September 2, 2004. (**V.V.S. RAO, J**)

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Mandal Revenue Officer, Penumur Mandal,
Chittoor District.
2. Two CCs to the Government Pleader for Revenue,
High Court of Andhra Pradesh, Hyderabad (O.U.T)
- 3 Two CD copies.